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COMMITTEE ON THE RIGHTS OF THE CHILD

Seventh session

SUMMARY RECORD OF THE 164th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 September 1994, at 10 a.m.

Chairperson: Ms. BADRAN

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Madagascar (continued) (CRC/C/8/Add.5; CRC/C.7/WP.5)

1. The CHAIRPERSON invited the Committee to continue consideration of the section of the list of issues (CRC/C.7/WP.5) entitled "Family environment and alternative care" in the light of the written replies of the Government of Madagascar, which had been distributed. The section read:

"Family environment and alternative care

(Arts. 5, 18 (paras. 1-2), 9, 10, 27 (para. 4), 20, 21, 11, 19, 39 and 25 of the Convention)

20. Please indicate what measures are envisaged and any assistance that might be needed to strengthen existing social structures, including those in rural areas, and to promote the establishment of a national council for the protection of children and a national foundation for children (paras. 167-169 of the report).

21. Please indicate any measures envisaged to deal with the practical difficulties that might arise in cases where a child has been separated from one or both parents, and give information on Madagascar's accession to bilateral or multilateral conventions in this field (paras. 175 and 176 of the report).

22. Does the State take responsibility for parental education and are there family counselling services (para. 60 of the report)?

23. Please indicate what measures are envisaged to ensure the implementation of a legal framework for the effective protection of children in cases of intercountry adoption, and indicate whether Madagascar is planning to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (para. 191 of the report).

24. Have there been studies on the problem of ill-treatment and sexual abuse of children, especially for the purpose of determining the social factors that foster such violations?

25. Please indicate whether information and awareness-raising campaigns have been developed to prevent situations of ill-treatment within the family and strengthen the system for protecting children? Can children file complaints in cases of ill-treatment or emotional abandonment by the family?

26. Do programmes exist for preventing the abandonment of children, and if so, are they satisfactory?

27. Are there programmes for training social workers in children's rights?"

2. Mrs. SANTOS PAIS, referring to intercountry adoption, said that the information provided by the Government of Madagascar gave the impression that more attention was paid to the interests of the adoptive family than to the best interests of the child. It was encouraging to note that Madagascar had participated in preparatory work for the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. She hoped that any future review of internal legislation concerning adoption would take the provisions of the the Hague Convention into account. She stressed the fundamental need to take account of the interests of the child and in that respect wondered whether it might not be possible to establish a follow-up system between Madagascar and countries of adoption in order to ensure that the rights of adopted children continued to be respected. She requested further information of the reasons for intercountry adoption. Were they purely economic or could it be because some children were born in "inauspicious" circumstances? It was equally important to ensure that, in the course of adoption procedures, the opinions of the child were heeded. It must not be forgotten that intercountry adoption should be regarded as a last rather than a first resort.

3. Turning to question 22, she asked whether any educational or counselling services were available to young people to prepare them for the responsibilities of parenthood.

4. On question 26, it would appear that abandonment of children occurred in most cases for economic reasons; it would be useful to know if abandonment occurred for other reasons and whether any measures were planned in order to change traditional attitudes and ensure that undesired children could enjoy their rights.

5. Referring to the role of social workers, she drew attention to the recently published United Nations manual for schools of social work and the social work profession.

6. The CHAIRPERSON, referring to question 24, emphasized the need for the problem of ill-treatment and sexual abuse of children to be recognized as a first step towards action to combat it. It might be possible to bring the problem into the open through studies by higher educational institutions, for example.

7. Mrs. EUFEMIO, referring to question 27, agreed that the United Nations manual mentioned by Mrs. Santos Pais might be of assistance, as could technical assistance through the Centre for Human Rights. It was not clear from the State party's initial report how many schools of social work were in existence. Moreover, it was mentioned that some categories of social workers were trained together with teachers. She requested information on the common element of teaching in such cases and drew attention to those areas outside education where social workers might be involved in protecting children's rights.

8. She shared the Chairperson's concern about the need to acknowledge cases of ill-treatment of children. It would be useful to consider the extent to which the Government might use its social mobilization programme in that context in order to harness community spirit in combating such abuse.

9. Concerning question 20, she noted that efforts were being made to train women in parental roles; it would be useful to know whether any measures were in place to make fathers more aware of their child-care role and of their parental responsibility.

10. On the question of non-governmental organizations (NGOS), she requested further information concerning their accreditation and collaboration with the Government and asked how it was intended that their autonomy should be preserved. Had any effort been made to assess the participation of NGOs and to allocate resources and responsibilities to them so that they could perform a role complementary to that of State bodies?

11. As to question 22, it would seem that family counselling was oriented mainly towards health and family planning. Were other aspects included and did counselling extend to prospective couples or was it only available to couples who had already formed a stable union?

12. On question 24, she requested information on the mechanism and focal point for tackling problems of ill-treatment or sexual abuse. Lastly, on the question of abandonment of children and taking into account the still prevailing notion of the extended family, she asked what, other than poverty, were the causes of abandonment and whether women who had children out of wedlock were stigmatized.

13. Mr. HAMMARBERG, referring to question 20 and the Government's reply, which stated in relation to NGOs that "there has been an absence of specific regulations and their development has been anarchic", requested more information on that matter. NGOs could play a very important role in the protection of the rights of the child, both in advocacy and by providing services. In many countries, such organizations were active in running children's institutions and homes and took considerable responsibility for children. At the same time, however, the State authority had a responsibility to ensure that the rights of children were not abused. It could be useful in such cases to establish criteria and carry out monitoring activities to ensure that such institutions met the standards laid down for equivalent State institutions. He asked how the Government of Madagascar envisaged the reorganization of the status and situation of NGOs.

14. Turning to the point raised by Mrs. Eufemio concerning the focus of counselling services, he stressed the need for counselling to be extended beyond health to other social dimensions, and particularly to tackle questions relating to families in crisis. On the whole, parental education was best approached by promoting parental care and mobilizing the mass media and NGOs. Further details on how the Government envisaged activities in that area would be useful.

15. Lastly, in relation to NGOs and the State party's intention to establish a national council for the protection of children, it would be useful if the Committee could be given an overview of the type of institution which was envisaged and the relationship it might have with NGOs.

16. Mgr. BAMBAREN GASTELUMENDI, referring to question 24 and the Government's reply, noted that few studies had been undertaken on the problem of

ill-treatment and violence against children. He further noted, in connection with question 26, that abandonment of children was attributed largely to poverty. Bearing those two points in mind, and taking into account the last paragraph of the Government's reply to question 24, which stated: "there has been a notable reduction in the respect due to the person of the child. In some cases, the infant-king has become a household drudge and even a martyr", it would be useful if the delegation could enlarge upon that point.

17. Mr. RASON (Madagascar), referring to the question of intercountry adoption raised by Mrs. Santos Pais, said that national provisions had been introduced in order to establish a control mechanism for adoption and to combat trafficking in children. It was true that the emphasis had been on the adoptive families and that little attention had been paid to the need to take the child's opinion into account. A recommendation could, of course, be made that greater consideration should be paid to that aspect by the Interministerial Adoption Commission; the current machinery was not, however, ideally suited for that purpose.

18. Mention had been made of the tendency for children who were disabled and those traditionally regarded as ill-fated to be rejected. International adoption was not regarded as a solution for children who were abandoned for traditional reasons. Children were mostly put up for adoption because of poverty. In Antananarivo, the parents themselves sometimes tried to sell their children to foreigners, who then sought to legalize their situation by applying for international adoption.

19. Family counselling did not include any special training for girls who became mothers at an early age. Sex education was very rare, being available perhaps in some urban schools. Boys and girls received no training in parental responsibility as part of their education. Child mothers did sometimes abandon their babies.

20. It had been asked what steps were being taken to change the attitude of parents to those children traditionally believed to be unlucky. No official measures had been adopted. Efforts in that direction were being made by religious organizations and other NGOs, and children were taught in primary schools not to reject others; but no official attempt had as yet been made to educate parents. Mrs. Eufemio's suggestions would be taken into account, but such action was made more difficult by the shortage of teachers. The United Nations manual for social workers, which she had mentioned, would be useful to the Government in planning new training measures. It had been suggested that the problem of the rejection of traditionally ill-fated children should be taken up at the university. There was a Faculty of Social Studies where research had started on traditional families, nuclear and extended. Mrs. Eufemio had also suggested that the Centre for Human Rights could provide Madagascar with technical assistance in that respect. Such assistance would be very welcome. She had asked how the Government could stem the incidence of ill-treatment and sexual abuse, which could do children permanent harm. Family counselling had so far been chiefly directed towards health and much readjustment would be necessary. Nothing had been done to educate fathers in parental responsibility. Young couples could find help at the Happy Family Centres financed by UNFPA, which were gradually spreading to all provinces of Madagascar.

21. A question had been asked about evaluating the contribution of NGOs in Madagascar. In the initial report the situation had been described as anarchic. There had been a proliferation of such organizations, after the series of natural disasters suffered by Madagascar and following the change of regime. The Government was endeavouring to coordinate their activities, and to ascertain which were able to help children and families and which were concerned with the economy. National NGOs tended to have been set up in order to receive part of the resources coming from abroad. Those aid funds went first to the Ministry of Economic Affairs, which shared them out among the other Ministries concerned in the light of projects planned; the individual Ministry then distributed its share among the NGOs. There was very little international participation in that third stage and the distribution of international resources constituted a real problem.

22. With regard to family planning, there was a plan to assist young couples, not materially or financially but through education. The only agency available to deal with such matters was the Happy Family agency, which was an official organization. The situation was still very fluid and it was difficult to answer the question precisely.

23. Regarding the classification and definition of NGOs, the Government had recently tried to set up a committee of officials from the ministries concerned to examine the work of all NGOs in Madagascar with a view to their reorganization and the clear division of responsibility. The Government was aware that the NGOs could not take responsibility for all services connected with the rights of the child. The concerns expressed by the Committee would be brought to the Government's attention.

24. In reply to the objection that the reply to question 22 on the list of issues stressed only health and made no mention of parental education, he said that part of the problem was that there was no ministerial department devoted especially to children. Questions of the family and children were dealt with by small units in the ministries of health, population and youth. There was as yet no overall response to the problems that arose. The proposed National Council for the Protection of Children was not the same as the Intersectoral Follow-up Committee, whose report was not yet available.

25. In reply to the question why, in the light of the extended family system in Malagasy society, children were abandoned, he said that the main reason was not poverty but fear - of scandal on the part of unwed mothers and of ill-luck on the part of uneducated parents.

26. The general reduction in the respect due to the person of the child, which had been remarked on, could perhaps be explained by the many changes in the political situation in Madagascar. Before 1960, under the colonial regime, a Western system of education had been inculcated and had lasted for more than 60 years. Previously, the traditional social structure had been based on kingship. After the country had become independent in 1960, there had been an effort to continue that system, while at the same time adapting it to a social structure based on the rural communities. Everything had changed when a socialist regime had taken power after 1972. Education had then become ideologically based, emphasizing equality and the mission of the people and the nation. Responsibility to society had taken precedence over

responsibility to the family. Hence, perhaps, the decline in respect for children. In colonial and pre-colonial times, the child had been king in Madagascar, regarded as a gift from God and a source of wealth to be preserved and cherished. The infant-king had now become the child wage-earner. The street children in the major cities were often their parents' only source of income.

27. The absence of social security arrangements for children had been explained earlier. Workers in the public sector, civil servants and some persons employed in the private sector enjoyed what might be termed formal social security, including family allowances which benefited children. However, that protection obviously covered only minority categories of the population living in the towns. The 80 per cent who lived in rural areas, farmers and peasants, had no social security. The Government was studying, in cooperation with two experts from ILO, the possibility of setting up a system of social security in rural areas.

28. The CHAIRPERSON invited the Committee to consider questions 28 to 34 contained in the list of issues (CRC/C.7/WP.5), which read:

"Basic health and welfare

(Arts. 6, (para. 2), 23, 24, 26, 18 (para. 3) and 27 (paras. 1 to 3) of the Convention)

28. Please provide information on:

Measures taken to collect data, statistical and other, on children's health and nutrition;

Family-planning measures;

The nature of the most frequent diseases and conditions under which they develop;

Incidence and treatment of HIV among children and parents, and measures taken to prevent AIDS.

29. Please provide information on the situation of disabled children, including their access to education, training, health care services, preparation for professional life, leisure possibilities and activities aimed at eliminating prejudice and social rejection of disabled children (paras. 15, 45 and 49 of the report).

Education, leisure and cultural activities

(Arts. 28, 29 and 31 of the Convention)

30. What is the percentage of the national budget allocated to education, in particular compulsory primary education?

31. Please indicate what measures are envisaged to provide appropriate training for teachers?

32. What are the measures for enabling children from underprivileged families to pursue their studies (para. 218 of the report)?

33. Please indicate the measures taken or envisaged to prevent pupils from dropping out of school and the early entry of children into the labour market.

34. Please provide information on the incorporation of human rights in general, and the rights of the child in particular, into conventional and other types of education, and the promotion of a spirit of understanding, tolerance and equality between the sexes and of friendship among all peoples and ethnic, national and religious groups."

29. Mrs. SANTOS PAIS said that she was concerned to see from the initial report, as well as reports from agencies such as UNICEF, that the population was finding it increasingly difficult to gain access to free health services, particularly in the rural areas and shanty towns. Attention had been drawn to the shortage of medicines, the lack of safe drinking water and the high incidence of malnutrition. She noted that there was a strong system of traditional medicine which was being put to use. Unfortunately, it seemed to be the case that health care depended increasingly on income. National poverty often tended to lead to corruption and she asked what measures were being taken to prevent it.

30. Mr. HAMMARBERG said that the picture of the health situation in Madagascar that emerged from a comparison of the statistics from various sources, national and international, was more or less average for Africa. There was a high maternal mortality rate and one third of children suffered from malnutrition. The lack of progress in immunization over the past two years was particularly worrying. At a time when most countries were increasing the rate of immunization, the trend in Madagascar was downwards; the international donor community must be alerted to that situation. An effort had been made by UNICEF to compare the GNP of countries with their infant mortality rate. The conclusion for Madagascar was that the country had performed better than could be expected in relation to its economy. Thus, Madagascar seemed to be using its scanty resources to the best advantage. Its need for help must be brought to the attention of the international community. When the Convention on the Rights of the Child had been adopted, it had been felt to imply an undertaking by the richer countries to support those which were in trouble economically so that they would have a chance to implement the Convention. The time had come to put that implicit agreement into effect and to meet the pledge through concrete decisions by the international agencies and the donor community.

31. Regarding the situation of disabled children, while the Committee understood the difficulties under which Madagascar laboured, its concluding observations would nevertheless have to include a statement to the effect that the discrimination to which the disabled were subjected constituted a flagrant violation of the rights of the child. The State had a clear responsibility to do its best to counter such discrimination.

32. Miss MASON asked whether it would be possible, since Madagascar was a country steeped in tradition, to use that tradition in a positive way. She

wondered whether children could help each other, with the more privileged being encouraged to help the less privileged with their education. Was there any possibility of organizing a national youth service, perhaps involving university students, to that end?

33. Mrs. EUFEMIO said that while there were apparently no programmes specifically designed for disabled children, the Government had attempted through social mobilization campaigns to disseminate information on the rights of the mentally and physically disabled. It would be useful if self-help programmes could be developed to train community members in rehabilitation techniques. Information on the incidence of diarrhoeal disease would also be useful. Madagascar apparently enjoyed an abundant water supply; information about the quality of drinking water should also be provided. Were there, in the view of the Malagasy delegation, psychosocial barriers to the implementation of family planning measures?

34. Mgr. BAMBAREN GASTELUMENDI said that he was unsatisfied with the answers provided. What programmes existed to provide children, and in particular those from underprivileged families, with adequate health care? What programmes were in effect to eliminate the social rejection of disabled children? Furthermore, the alarming 50 per cent school drop-out rate in rural areas raised the question of what measures were being taken to make it possible for poor children to continue their education.

35. The CHAIRPERSON said the fact that disabled children were often hidden at home suggested that the figure cited (400,000 disabled children between the ages of 6 and 14) might be low. Furthermore, the solutions offered in the report of Madagascar on the special problem of the education of the girl child did not seem sufficiently effective; it was her hope that the Conference on Women to be held in Beijing in 1995 would devote particular attention to that issue.

36. Mrs. SANTOS PAIS said that she was disturbed by the deep disparity between the rural and urban sectors, as well as between the rich and poor in Madagascar, unquestionably a prejudice and class-ridden society. Recent political developments concerning the use of the language taught in schools were of considerable interest; unfortunately, in the short term, education would suffer during the transition. The Malagasy Government should consider ways in which it might better assist the family in meeting the costs of school attendance, including, inter alia, transportation and clothes. The decline in school attendance had certainly been caused in part by the fact that French, until recently the language of instruction, was not spoken in rural areas. In underprivileged families, parents also in many cases encouraged children to leave school in order to contribute to the household, a phenomenon which tended to promote the economic and sexual exploitation of young people. Lastly, the Malagasy delegation should prepare a list of its priorities and begin to work on developing solutions.

37. Mr. HAMMARBERG said that the information provided by the Malagasy delegation on the incidence of AIDS indicated some uncertainty about the extent of the problem. What measures were being taken to assess the situation in realistic terms? What steps were taken to halt the transmission of the disease in the event that a case was detected? It was clear that investing in

education improved prospects for a national economy. By comparison with the rest of the world, Madagascar seemed to be regressing in that regard. Only one third of the children of that country reached the fifth grade, and although the portion of the budget devoted to education was significant, it was not high in relation to needs. Clarification would be useful on the actual role of the National Education Improvement Programme in bolstering school attendance; the Malagasy delegation should elaborate on the strategy of the Government for remedying that very grave situation.

38. Miss MASON noted that in Madagascar a child was stigmatized for such a condition as being born a twin, a condition obviously accepted in the Western world. In those circumstances, what attitude prevailed towards people with AIDS? Were they totally ostracized?

39. Mrs. SANTOS PAIS said that the attitude towards orphans in Africa was a serious problem; the Malagasy delegation should describe any measures taken to combat that problem.

40. Mrs. EUFEMIO said that further information on the reasons behind the significant drop-out rate would be useful. If, for example, Malagasy children in rural areas were needed to assist with agricultural work, it would perhaps be useful to consider whether school hours interfered with their work schedule.

41. The CHAIRPERSON invited the Malagasy delegation to respond to the further points raised by members of the Committee.

42. Mr. RASON (Madagascar) said that his country did indeed suffer from the problem of poor access to health centres. It might be of interest to the Committee to know that a research programme had been launched for the purpose of developing, in collaboration with the provincial universities, new medical approaches based in traditional Malagasy medicine and of disseminating such practices throughout the country. Corruption was certainly a problem in Madagascar, and efforts were under way to develop methods of prevention and community awareness; those included five-minute broadcasts on corruption. The lack of accurate statistical data was arguably a serious problem; unfortunately, the existing data bank had a shortage of data collectors.

43. It was true that Malagasy children - and disabled children were no exception - had duties but no rights. Since families in Madagascar were generally very large, that tradition was often perpetuated by parents.

44. As to the proposal that programmes should be developed to encourage children from different strata of society to help each other, one such programme had been launched, a summer youth exchange that sent children from the provinces into urban areas and vice versa. There were, however, no university programmes dealing with social education in general, and education for children in particular, nor were students involved in disseminating information on the rights of the child. While some specialized schools existed, such as social-work schools, they generally did not endorse the objectives of the Convention.

45. Again, no official programmes existed specifically for disabled children, although a number of charity organizations dealt with that problem. Clearly, solutions must be found. The figure cited for the number of disabled children in Madagascar was in fact an overestimate. There were indeed psychological and social obstacles to family planning measures, including in particular the Malagasy tradition of large families. In his view, the solution lay in education, communication, training and information. A question had been asked about strategies for dealing with diarrhoeal disease in Madagascar; his delegation would provide an answer to that question in writing. The school drop-out rate, a grave problem, would call for drastic change in attitude. No courses in civic education had been offered in schools in Madagascar for the past 20 years; in his view, it was essential to reintroduce such programmes, with emphasis on health care.

46. Concerning HIV/AIDS infection, he said that a recent seminar organized in Madagascar by WHO had found that the figures previously advanced should be multiplied by 10 or even 20. He was unable to furnish detailed information on follow-up action in response to that finding, but measures were certainly being taken at the African regional level in response to the rapid spread of AIDS. In Madagascar, the upsurge was attributed at least in part to the development of large-scale low-cost tourism. He was not aware of any special programmes or of any national or regional recommendations benefiting children affected by HIV/AIDS. It was, however, certain that in Madagascar the disease was regarded as a curse and that parents as well as society at large must be educated in coming to terms with the pandemic.

47. After commenting briefly on the general educational situation and development plans, and referring once again to the implications of the language reform scheduled for 1996, he stated that there were traditional as well as purely economic reasons for the drop-out problem. Especially in the southern part of the country, teenage boys were sent out to guard the family cattle, while the labour of children of both sexes was required on the land at sowing and harvest time.

48. Miss MASON said that in her earlier remarks on self-help in education, she had been thinking less of exchanges (which could give rise to undesirable sentiments of superiority or envy as more and less privileged representatives of the school-age population encountered one another), than of situations where educated children and students might initiate their uneducated fellows both in their rights in that regard and in the rudiments of the learning process.

49. Mrs. SANTOS PAIS expressed the hope that the Committee's concerns in the essential matter of children's health and education would be communicated to the Malagasy authorities. More particularly, she commended to their attention a number of globally-based studies prepared by WHO on the subject of children who were direct or indirect victims of HIV/AIDS, in which, inter alia, stress was laid on combating social discrimination and stigmatization.

50. Mrs. EUFEMIO inquired whether, in the light of seasonal demands for child labour in the farming community, the school programme might not itself be adjusted. She sought clarification of the statement, in the written reply to

question 33 in the list of issues, that it was "likely also that pre-school education [would] help indirectly to prevent dropping out and the early entry of children to the labour market".

51. Mgr. BAMBAREN GASTELUMENDI asked for more detailed information concerning the implementation of the right of disabled children to special treatment, education and care. Were they provided with training so that they could take their place in the world of work? Did special legislation exist concerning their employment? Did standards and rules exist to ensure that disabled children enjoyed physical access, by means of special ramps, staircases, entrances and so on, to buildings and other meeting-places frequented without difficulty by the non-disabled?

52. Mr. RASON (Madagascar) said, in response to Mrs. Eufemio, that school programmes in rural areas were already staggered and periodically interrupted, but that was unfortunately because of a shortage of teachers. Her suggestion that account be taken, when planning the school year, of seasonal needs for child labour on farms was certainly worth considering.

53. He knew of no official programmes for physically or mentally disabled children; one NGO, the Orchidée Blanche, worked with such children, with assistance from foreign organizations. Labour legislation contained no special provisions for the disabled, but it was part of the caring tradition of the Malagasy people to try to ensure that such persons found gainful occupations. The country had two hospitals catering for the blind and deaf, and a Lutheran organization provided care for deaf mutes.

54. In reply to a question by Mr. Hammarberg, he said that he would inquire whether any community-based rehabilitation programmes for disabled children existed in Madagascar, in line with WHO policy.

55. The CHAIRPERSON invited the Committee to consider questions 35 to 37 contained in the list of issues (CRC/C.7/WP.5), which read:

"Special protection measures

Administration of juvenile justice

(Arts. 40, 37 and 39 of the Convention)

35. Please provide detailed information on the administration of justice for minors and the status of children in conflict with the law, in particular as regards the following issues:

The prohibition of life imprisonment without possibility of release;

The use of arrest, detention or imprisonment of a child as a measure of last resort and for the shortest period of time (para. 274 of the report);

The number of children deprived of liberty and the reasons therefor;

The possibility of having prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision thereon;

Measures taken or envisaged to overcome the difficulties described in paragraph 273 of the report and to ensure the effective implementation of article 37 (c), of the Convention.

36. Please indicate the steps taken or envisaged to consider the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, in the light of article 40, paragraph 3 (a), of the Convention.

37. Please provide further information on the treatment of juvenile offenders, in particular on the following points:

What are the measures taken to ensure contact between the child and the family?

How are the conditions of detention in such establishments supervised?

Are complaint procedures available in case of ill-treatment?

What educational possibilities and what health services are provided in such establishments?

In the light of article 25 of the Convention, is it possible to have a periodic review of the placement decision?

Have the staff in such establishments been familiarized with the provisions of the Convention and other international legal instruments adopted by the United Nations concerning the treatment of young offenders?"

56. Mrs. SANTOS PAIS drew attention to the special impact of national poverty on children and to the difficulties encountered when attempting to measure that impact in all its dimensions with a view to remedial measures.

57. The Malagasy authorities had replied in considerable detail to the questions asked in the list of issues about the administration of juvenile justice. It was none the less clear that legislation in that sphere, the most important element of which dated from 1962, was outmoded and could not accommodate the provisions of the Convention; review and revision were thus called for. For example, contrary to what had been stated, it appeared that terms of life imprisonment with hard labour could, albeit exceptionally, be imposed on minors, and that was in violation of article 37 (a) of the Convention. More generally, it appeared that there were no special provisions in Madagascar's criminal law and procedure to take account of the fact that the offenders were juveniles; reduced sentences in comparison with those imposable on adults appeared to be the only concession to extreme youth. Set against a major concern with the protection and security of society, the

nature, needs and vulnerability of immature persons and personalities seemed to be of little account. It also appeared that many Malagasy children were deprived of their liberty, and that pre-trial detention pending investigation could be very lengthy, sometimes measured in years, and that the principle of the presumption of innocence was not always observed. She understood that legal proceedings involving children took place in camera, with the admirable intention of protecting the privacy of the juveniles concerned. But that made ease of access to defence counsel and other legal assistance all the more imperative.

58. Another matter of special concern was the establishment of the age of criminal responsibility. In Madagascar, as elsewhere, there was a tendency to leave that determination to the judicial authorities, whose decision might be highly subjective. Not only the Convention but also the Beijing Rules provided that a child's emotional, mental and intellectual, as well as physical, maturity should be taken into account; that provision was designed to ensure that the minimum age of criminal responsibility was not set too low and to give every chance of success to measures for the early rehabilitation of very young offenders and their reintegration into the family and society.

59. Obviously, because of their young age and needs, children deprived of liberty should enjoy greater opportunities of contact with their family than adults; imprisonment itself was punishment enough. Proper complaints procedures in the case of maltreatment should exist not only in theory, but also in practice. Periodic prison visiting - preferably by juvenile court judges and magistrates - should be encouraged in order to verify that the child's best interests were being respected. Unhappily, a national economic crisis could have particularly negative effects in prisons and institutions of detention, with a general decline in conditions that was not always perceived in the outside world. Inmates thus found themselves doubly punished. The inability to provide minimum standards should serve as an incentive to seek alternatives to imprisonment and to lay greater stress on preventive measures, with the mobilization of the family and community as prescribed in the Riyadh Guidelines.

60. The relationship between poverty and corruption could be especially pronounced and harmful in closed institutions, whose administrators and staff, especially when sheltered from outside scrutiny, could be easily tempted into according preferential treatment in return for monetary reward.

61. She trusted that all the concerns she had mentioned would be communicated to the appropriate national authorities in Madagascar, and notably to the Intersectoral Follow-up Committee. She further hoped that they would help to stimulate the revision of the country's legislation and practice with regard to the administration of juvenile justice to bring them into line with the Convention and with other relevant international standards, notably the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

62. Mr. HAMMARBERG, endorsing the previous speaker's remarks, suggested that the area under discussion was one where United Nations expert advisory services might well be of considerable value. Rather than an attempt to

adjust an adult-oriented judicial and penitentiary system to children, what was required was a new departure, with the promotion and protection of children's rights and respect for their special needs as its starting-points.

63. Noting from the written reply to question 35 on the list of issues that a child convicted of a crime for which the penalty was death or hard labour for life might be sentenced to as much as 20 years' imprisonment, he observed that such severity would be very much at variance with the spirit of the Convention. That provision ought, he believed, to be reviewed, especially when it was also legally possible in Madagascar to set aside a sentence of hard labour for life. He inquired about the length of pre-trial detention of young people; the provisions on the deprivation of liberty set out in article 37 of the Convention obviously applied to cases under investigation.

64. Lastly, he remarked that in many countries the locked doors of places of detention tended to conceal violations of rights that aroused little concern on the part of politicians and senior administrators. Perhaps the time had come to envisage monitoring arrangements that involved not only NGOS, but also the institutions themselves.

65. Miss MASON observed that the administration of juvenile justice suffered most from a shortage of resources; rather than radical reform, the improvement of existing systems was often the best that could be hoped for. Noting from paragraphs 267 and 269 of the initial report of Madagascar (CRC/C/8/Add.5) that the presence of defence counsel in juvenile proceedings was obligatory and that the examining magistrate was required to act both for the prosecution and for the defence, she wondered how the latter requirement was implemented in practice.

66. It was stated in the written reply to question 35 on the list of issues that, in accordance with the ordinance of 1962, investigations in juvenile proceedings were to be secret and consequently the provisions of the Code of Penal Procedure regarding the right to a defender did not apply. How could that statement be reconciled with the remark in paragraph 270 of the initial report that, while to protect the child's dignity and personality hearings took place in camera, they were always in the presence of defence counsel and with the safeguards of the right to a defence?

67. Mgr. BAMBAREN GASTELUMENDI said that the previous two speakers had voiced many of his own concerns. He would merely ask further, in connection with the reply to question 37, up to what age infant children were allowed to remain with detained mothers and what became of them after that age.

The meeting rose at 12.55 p.m.